UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CARA SHOUSTERMAN and EVAN BARRETT,

Plaintiffs,

- against -

CVS PHARACY, INC.,

Defendant.

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COMPLAINT

Plaintiff Demands a Jury Trial

Plaintiffs, CARA SHOUSTERMAN and EVAN BARRETT, by and through their attorneys The Law Offices of Fausto E. Zapata, Jr., P.C., upon information and belief, alleges of Defendant CVS PHARMACY, INC., as follows:

NATURE OF CLAIMS

1. Plaintiffs complain that Defendant violated their rights under 42 U.S.C. § 1981, N.Y. City Admin. Code § 8-101, et seq. ("New York City Human Rights Law" or "NYCHRL"), N.Y. Executive Law § 290, et seq. ("New York State Human Rights Law" or "NYSHRL"). Additionally, Plaintiff also alleges New York State claims under the theories of false imprisonment, negligent hiring, training, and supervision, and intentional infliction of emotional distress.
2. Plaintiffs seek declaratory and injunctive relief to redress the injuries Plaintiffs suffered as a result of Defendant's actions.
3. Defendant is liable for the conduct of its managers and agents who exercised managerial and supervisory responsibility, and because Defendant had knowledge of their employees and agents' discriminatory conduct, Defendant acquiesced in such conduct by failing to take immediate and appropriate corrective action.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over the claims in this action under the provisions of 28 U.S.C. §§ 1331 and 1367.

5. This Court has subject matter jurisdiction over the claims in this action under the provisions of 42 U.S.C. § 1981.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391.

7. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

PARTIES

8. Plaintiff Evan Barrett is a male citizen of the United States residing in New York County, who has dark skin and is of Puerto Rican descent, and is married to Plaintiff Shousterman.

9. Plaintiff Cara Shousterman is a resident of New York County, who has light skin and is of Canadian descent, and is married to Plaintiff Barrett.

10. Defendant CVS PHARMACY, INC., is a corporate entity authorized to conduct business in the State of New York.

11. CVS PHARMACY, INC., is a retail and health care company.

12. FACTUAL ALLEGATIONS

13. On or about November 2, 2015, a Monday, Plaintiff Shousterman went to Defendants' premises, a CVS store (hereinafter "CVS" or "store") located at 2182 Broadway between West 77th and West 78th Streets in New York, New York.

14. Upon information and belief, the above-mentioned premises were owned, maintained, controlled, supervised, subleased and possessed, leased and/or operated by Defendant.

15. Plaintiff Shousterman entered the store at approximately 8 p.m. with the intention to make a purchase.

16. Plaintiff Shousterman often visited this CVS location on Monday evenings because of a nearby weekly appointment with a medical provider, and would shop at the CVS store while she waited for her husband, Plaintiff Barrett, to pick her up in his car.

17. When Plaintiff Shousterman shopped at this store, her husband Plaintiff Barrett usually picked her up in his car on his way home. On this occasion, Plaintiff Barrett entered the store to meet her because he found a parking spot outside.

18. After entering the store, Plaintiff Barrett picked up and looked at a package of razor blades and then returned them to the shelf. He did not take or tamper with the razor blade package.

19. Plaintiffs met in the store and then proceeded to a self-checkout register to pay for their purchases. A cashier was monitoring the self-checkout registers and assisted Plaintiffs enter a purchase when a bar code did not scan correctly. The cashier saw Plaintiffs pay for all of their items.

20. After paying for the items, Plaintiffs began to exit the store.

21. However, before Plaintiffs could leave the store, an African American CVS employee wearing a jacket asked Plaintiff Barrett to come with him. He was larger than the Plaintiffs.

22. Upon information and belief, this employee was the manager of the store.

23. Plaintiff Shousterman followed Plaintiff Barrett to a room in the back of the store as he went with the manager.

24. Plaintiff Barrett asked why they were being stopped and the manager accused him of stealing from the store.

25. The manager also accused Plaintiff Barrett of using a magnetic key to demagnetize the sensors in a scheme to steal from CVS.

26. Plaintiffs did not take anything from the store and informed the manager that they did not try to take anything, and offered to empty their pockets. Plaintiffs also informed the manager that they did not have a demagnetizing device.

27. The manager refused to listen to the Plaintiffs and insisted that he saw Plaintiff Barrett steal something and that the store security camera captured him stealing, and that the police were on their way.

28. Plaintiffs were intimidated by the manager because of his authority, physical size, and his aggressive demands and insistence they had done something wrong.

29. Plaintiff Barrett told the manager to check the security camera footage again because he had done nothing wrong.

30. The manager then accused Plaintiff Barettt of hiding the demagnetizer in the store, despite having no proof of this, and despite the security camera footage not showing any such action.

31. Plaintiffs asked to speak to a manager, because they felt that we were being racially profiled by the CVS employees. At this point, the individual disclosed that he was the manager.

32. Plaintiffs told the manager they wanted to leave and return the items they had purchased and he refused to allow Plaintiffs to return the items the Plaintiffs had purchased.
33. Defendant has a liberal return policy that allows customers to return products of the nature that the Plaintiff purchased within thirty (30) days of the purchase date.
34. Defendant refused to allow the Plaintiffs to exercise their rights to terminate their purchase by returning the items that the Plaintiffs had purchased.
35. Despite the fact that the manager had not asked Plaintiff Shousterman to go to the back room with him, the manager told both Plaintiffs that they could not leave and kept them confined in the back room.
36. Plaintiffs wanted to leave but complied with the manager's order because the manager physically intimidated them.
37. There was also another CVS employee who came into and out of the room and the two employees were blocking the doorway.
38. Plaintiffs were afraid that if they tried to leave the CVS employees would try to stop them and that they would be physically battered in the process.
39. After waiting for some time, two New York Police Department Officers arrived.
40. The Police Officers told the Plaintiffs that they were being placed under arrest for shoplifting and the Officers placed the Plaintiffs in handcuffs against their will.
41. The NYPD Lfficers asked Plaintiffs what had happened, asked questions about their personal lives and our history, and searched through their belongings.
42. Plaintiffs answered all of the NYPD Officers' questions and told them they had not taken anything.

43. One of the NYPD Officers went to look at the store's security camera footage.

44. Upon information and belief, the store's security camera footage did not show Plaintiffs stealing anything from the store.

45. When the one of the NYPD Officers returned to the room he was laughing.

46. At that point, one of the Officers said that Plaintiffs hadn't taken anything and that "these guys always jump the gun."

47. Upon information and belief, the above statement by the NYPD Officer was referring to CVS employees' pattern, practice and/or propensity of targeting minority customers for discrimination.

48. The Police Officers unshackled the handcuffs that were restraining the Plaintiffs.

49. After unshackling the handcuffs that were restraining the Plaintiffs, the Police Officers escorted Plaintiffs out of the store in front of other customers.

50. Plaintiffs wanted to return the items they purchased from CVS and collect the names of the CVS manager because of their distress at the way they had been treated. However, the Police Officers ordered the Plaintiffs to leave.

51. Plaintiff Shousterman was extremely embarrassed to be publicly treated in this manner and felt physically ill. She was traumatized by the incident and since that time, has felt depressed, abused, stressed and has trouble concentrating at work.

52. The stress of the incident also exacerbated Plaintiff Shousterman's medical conditions. Following the incident, her symptoms grew worse as she suffered from extreme stomach pain and constipation. She had to visit her doctor to be prescribed medication to control these symptoms.

53. The symptoms described above make it difficult for Plaintiff Shousterman to function normally in her daily life, including at home and at work.

54. Plaintiff Barrett was also extremely embarrassed to be publicly treated in this manner and felt very ashamed to be falsely accused of committing a crime in front of his wife. He was traumatized by the incident, and since it occurred he has felt depressed and abused, and has suffered from anxiety and panic attacks due to these events.

55. Both Plaintiffs feel as if they can never return to this CVS store because they would feel unsafe.

56. As stated, Plaintiff Shousterman frequently shopped at this CVS location on Monday evenings and was never before accused of not paying for any items. The only difference on this occasion is that her husband Plaintiff Barrett, who has dark skin and is of Puerto Rican ancestry, met her inside the store and they shopped together.

57. The false allegations of theft were based on racial animus held by Defendant and its employees.

58. Despite having no reasonable proof, Defendant's employees accused Plaintiff Barrett of stealing and tampering with their security measures, confined both Plaintiffs to a small room and would not let them leave the store, called the police with a false report, and subjected Plaintiffs to a humiliating situation in public.

59. Defendant confined Plaintiffs without their consent or any reasonable justification.

60. Defendant discriminated against Plaintiff Barrett based on the color of his skin and his race and ethnicity, and against Plaintiff Shousterman based on her association with her husband.

AS A FIRST CAUSE OF ACTION AGAINST DEFENDANTS UNDER 42 U.S.C. §§ 1981 and 1988

61. Plaintiffs repeat and re-allege each and every allegation made in the above paragraphs of this complaint.

62. By and through their actions, Defendant and its employees, agents and/or managers intentionally discriminated against the Plaintiff Evan Barrett on the basis of race and/or ethnicity, and Plaintiff Cara Shousterman on the basis of her association with Plaintiff Evan Barrett, by falsely accusing them of shoplifting, forcibly preventing them from exiting the premises of the store, verbally berating Plaintiffs, humiliating Plaintiffs, intimidating Plaintiffs and detaining Plaintiffs without their consent, all without cause, justification or evidence.

63. By and through their actions, Defendant and its employees, agents and/or managers intentionally discriminated against the Plaintiffs on the basis of race and/or ethnicity, and/or their association with individuals of a different race and/or ethnicity, by falsely reporting Plaintiffs to the police, and falsely accusing Plaintiffs of engaging in criminal activities, and refusing to permit the Plaintiffs to obtain a refund and terminate the transaction that Plaintiffs made shortly before being falsely arrested by the Defendants.

64. Defendants singled out Plaintiff Evan Barrett and treated him in the manner described above because of his race and/or ethnicity.

65. Defendants singled out Plaintiff Cara Shousterman and treated her in the manner described above because of her association with Evan Barrett who is of a different race and/or ethnicity than her own.

66. Defendants do not discriminate against non-minority or customers in non-interracial relationships in the manner in which the Plaintiffs were discriminated against.

67. By and through their actions, Defendant and its employees, agents and/or mangers deprived the Plaintiffs their rights guaranteed under 42 U.S.C. § 1981.

AS A SECOND CAUSE OF ACTION FOR DISCRIMINATION UNDER NEW YORK CITY HUMAN RIGHTS LAW

68. Plaintiffs repeat and re-allege each and every allegation made in the above paragraphs of this complaint.

69. By reason of the foregoing, Defendants have violated the Administrative Code of the City of New York § 8-107, also known as the New York City Human Rights Law, which states that places of public accommodation cannot deny any of the "accommodations, advantages, facilities, or privileges thereof" based on a person's race or national origin.

70. Defendants have thereby violated the New York City Human Rights Law.

71. As a result of Defendants' unlawful conduct, plaintiff has suffered and continues to suffer injuries and damages.

AS A THIRD CAUSE OF ACTION AGAINST DEFENDANTS FOR DISCRIMINATION UNDER NEW YORK STATE HUMAN RIGHTS LAW

72. Plaintiffs repeat and re-allege each and every allegation made in the above paragraphs of this complaint.

73. By reason of the foregoing, Defendants have violated New York Executive Law § 290, *et seq*., which states that places of public accommodation cannot deny any of the accommodations, advantages, facilities or privileges thereof based on a person's actual or perceived race, color or national origin.

74. The conduct of Defendant in subjecting Plaintiffs to being stopped, questioned, insulted, humiliated and detained at the store has denied them the privileges of public accommodation based on Plaintiff Barrett's race, color and/or national origin, and Plaintiff Shousterman's association with her husband, Plaintiff Barrett.

75. Defendant's policies and practices have had disparate impact on innocent minority shoppers, including Plaintiffs, as they were subjected to disparate treatment.

76. Defendant has failed to monitor its employees, agents and/or managers adequately and therefore are responsible for their conduct.

77. As a result of Defendant's unlawful conduct, Plaintiffs have suffered and continues to suffer injuries and damages.

AS A FOURTH CAUSE OF ACTION AGAINST DEFENDANTS FOR FALSE IMPRISONMENT

78. Plaintiffs repeat and re-allege each and every allegation made in the above paragraphs of this complaint.

79. On the above mentioned date, the employees, agents, and/or mangers of Defendant forcibly prevented the Plaintiffs from exiting their premises with Plaintiffs knowledge and without Plaintiffs' consent.

80. Upon information and belief, the Defendant's employees, agents, and/or managers had no justifiable reason to detain, or cause Plaintiffs' detention at the aforementioned store.

81. The acts complained of which were carried out by the Defendant's employees, agents, and/or managers were not privileged under any case law or statutory legal basis.

82. The false imprisonment was accomplished with such gross disregard for the rights of the Plaintiffs as to constitute gross and malicious conduct and a high degree of moral culpability sufficient to warrant an award of punitive damages.

83. Each and all of the acts of the employees, agents, and/or managers alleged herein were done by said persons while acting within the scope of their employment by Defendant.

84. The acts complained of were carried out by the aforementioned employees, agents, and/or managers in their capacities as employees of Defendant, pursuant to the customs, usages, practices, procedures and/or rules of Defendant, all under the supervision, direction, authorization and/or consent of managing and supervising employees and agents of the Defendant.

85. Defendant, by their officers, managing and/or supervising personnel, authorized, participated in, consented to, and/or ratified Plaintiffs' false imprisonment.

AS A FIFTH CAUSE OF ACTION AGAINST DEFENDANTS FOR NEGLIGENT HIRING, TRAINING AND SUPERVISION

86. Plaintiffs repeat and re-allege each and every allegation made in the above paragraphs of this complaint.

87. In hiring and supervising employees, Defendant has a duty to prevent such personnel from engaging in discriminatory, tortious and otherwise unlawful conduct.

88. Upon information and belief, the Defendant's employees, agents, and/or managers who committed the above complained of acts had a propensity for discrimination, tortious conduct and violating the civil rights of minority customers, including Plaintiffs.

89. Defendant negligently and/or recklessly failed to satisfy their duty of care in hiring, supervising and retaining personnel that engaged and continue to engage in a pattern and practice of civil rights violations, discrimination and other tortious conduct.

90. That the Defendant was negligent, careless and reckless in hiring and retaining its employees, including the above employees, agents and/or managers, in that said people lacked the experience, deportment and ability to be employed by Defendant; that

Defendant failed to exercise due care and caution in their hiring practices; and that Defendant, their agents, employees and/or managers were otherwise careless, negligent and reckless.

91. Defendant knew or should have known that their agents, employees and/or managers at CVS stores have engaged in racial profiling and subjected dark skinned and minority shoppers, including the Plaintiffs, to civil rights violations, false imprisonment, harassment, verbal abuse, insults, humiliation, coercion and physical intimidation based on their race, national origin, ethnicity and/or color.

92. Defendant knew or should have known that their policies and practices have created an unreasonable risk of civil rights violations, discrimination and other unlawful conduct that would harm people of color, or individuals who associate with people of color.

93. As a result of Defendant's unlawful conduct, Plaintiffs have suffered and continue to suffer injuries and damages.

AS A SIXTH CAUSE OF ACTION AGAINST DEFENDANTS
FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

94. Plaintiffs repeat and re-allege each and every allegation made in the above paragraphs of this complaint.

95. By and through their actions, Defendant and its employees, agents and/or managers have negligently inflicted emotional distress upon the Plaintiffs.

96. Defendant and its employees, agents and/or managers have engaged in extreme and/or outrageous behavior when they falsely accused Plaintiffs of shoplifting, forcibly prevented Plaintiffs from exiting the premises of their store, verbally berated Plaintiffs, harassed Plaintiffs, humiliated Plaintiffs, intimidated Plaintiffs and detained Plaintiffs without their consent, all without cause, justification or evidence.

97. Defendant and its employees, agents and/or managers engaged in the complained of behavior in disregard of the probability that it would inflict severe emotional distress upon the Plaintiffs.
98. The Defendant's conduct unreasonably endangered Plaintiffs' physical safety and/or caused Plaintiffs to fear for their safety.
99. As a result of Defendant's behavior, Plaintiffs suffered severe emotional distress.

WHEREFORE, Plaintiffs respectfully requests a judgment against the Defendant:

A. Declaring that Defendant engaged in unlawful and discriminatory practices prohibited by 42 U.S.C. § 1981, New York State Human Rights Law and New York City Human Rights Law;

B. Declaring that the Defendants falsely imprisoned the Plaintiffs, were negligent in hiring, training, and supervision of its employees, and intentional infliction of emotional distress.

C. Awarding Plaintiffs compensatory damages for emotional pain, suffering, humiliation, embarrassment, inconvenience, mental anguish, loss of enjoyment of life, distress and injury to reputation, in an amount in excess of the jurisdiction of all lower courts;

D. Awarding Plaintiffs punitive damages;

E. Awarding Plaintiffs the cost of this action and reasonable attorney's fees to the fullest extent permitted by law; and,

F. Awarding Plaintiff such other and further relief as the Court may deem equitable, just and proper to remedy Defendant's unlawful and discriminatory practices.

JURY DEMAND

Plaintiff hereby demands a jury of all issue to be tried.

Dated: New York, New York
October 26, 2016

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